



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD**  
Legal Branch

Technical Advice Memorandum – 200529  
September 26, 2000  
HRA Disabled Minor

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#### ISSUE PRESENTED:

In the course of processing the Homeowner and Renter Assistance (HRA) Claims in the Business Entities Section (BES), questions related to assistance payments to disabled minors have arisen.

#### CONCLUSIONS

Specific questions and answers indicated below.

#### APPLICABLE LAW

Revenue and Taxation Code section 20505 provides that the claimant must be blind or disabled as defined in Section 12050 of the Welfare and Institutions Code on the last day of the calendar year.

Section 12050 of the Welfare and Institution Code provides that an individual shall be considered blind or disabled as defined in Section 1614 of Part A of Title XVI of the Social Security Act. That Act defines a disabled minor as a child with a physical or mental impairment that results in marked and severe functional limitations, which can result in death or can be expected to last for a continuous period of not less than 12 months. Moreover, a child is not considered disabled if the child engages in substantial gainful activity.

Revenue and Taxation Code section 20510 defines rent as an amount paid at arms length solely for the right of *occupancy* of a residence and utility payments. The amount paid must be at least \$50 per month and pursuant to a *rental agreement* between the claimant and a third party.

## ANALYSIS AND DISCUSSION

Question #1: Does a minor who meets the requirement to receive SSI based on a disability meet the HRA disability requirement?

Answer #1: Yes. Because a recipient of SSI based on a disability meets the definition of disabled as provided in Revenue and Taxation Code section 20505.

Question #2: Does a child who meets the requirement to receive SSI based on survivor benefit qualifications meet the HRA disability requirement?

Answer #2: No. Because a minor child who meets the requirement to receive SSI based on the survivor benefit qualification has NOT met the HRA disability requirement.

Question #3: What, if any, substantiation should we require from the claimant? Would we ask for ALL of the following and deny if we do not receive the verification? OR would one or two of the documents listed below be enough to substantiate the claim?

- A copy of the SSI letter
- A statement from a physician attesting to the disability, and
- A rental agreement or contract made by the parent or guardian on behalf of the child to live in a separate residence (other than a foster home) outside the family home.

Answer #3:

Part A: A copy of the SSI letter OR a statement made under penalty of perjury by a physician is enough to establish the child's disability. FTB's primary source of verification of disability should be that the child is receiving SSI. If the FTB is unable to obtain this information from the Department Health Services then the claimant should provide a copy of his or her SSI approval letter from the Social Security Administration. If FTB is relying on a statement from a physician then a statement, made under penalty of perjury, that the child's disability meets the definition of impairment as defined in Section 12050 of the Welfare and Institution Code, is sufficient.

Part B: In addition to the verification of disability, the disabled minor claimant must provide a copy of the rental agreement made by the parents on behalf of the minor child to live in a separate residence outside the home. Generally, this will be a group home type of living arrangement. This DOES NOT include a foster home, the parent's home, or a relative's home.

Question #4: Does a Foster Home qualify as a rented residence for a disabled minor?

Answer #4: No. Because it does not satisfy the requirement of Revenue and Taxation Code section 20510, that the rent be paid pursuant to a *rental agreement* between the claimant and a third party. A foster child is placed in the foster home by a state agency not by a rental agreement. Therefore, even though a minor foster child is disabled, the child is not qualified to file a claim for renter's assistance.

Question #5: Does a disabled minor who lives at home with his/her parents in a home that the parents own qualify for HRA benefits?

Answer #5: No. Because it does not satisfy the requirement of Revenue and Taxation Code section 20510, that the rent be paid pursuant to a *rental agreement* between the claimant and a third party. Generally, a child does not pay rent to a parent for the privilege of living in the family home. Therefore, even though a minor child is disabled, the child is not qualified to file a claim for renter's assistance.

Tax Counsel